



Volume 71
Issue 3 *Issues 3 & 4*

Article 9

June 1969

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Darrell V. McGraw

Counsel for Bureau of Government Research, West Virginia University

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Recommended Citation

Darrell V. McGraw, *Practical Political Considerations in Constitutional Revision*, 71 W. Va. L. Rev. (1969).
Available at: <https://researchrepository.wvu.edu/wvlr/vol71/iss3/9>

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Practical Political Considerations in Constitutional Revision

Darrell V. McGraw*

Just before the general election in 1966 my wife, Marie, was teaching a college class in social science which was discussing the five constitutional amendments to be voted on in the upcoming election. Some student commented that it would seem that most enlightened citizens would vote for the amendments. From the back of the class came a comment from another student—"yes—but how many of us is that."

When the results of the election were in it was obvious that there weren't enough of us. The five amendments were resoundingly defeated.

When we talk of constitutional revision I'm reminded of the words of a former law professor of mine, Robert T. Donley. In a class in contracts once—he said—"the law exists in the minds of those who contemplate the law"—so it is with constitutional revision. It exists only in the minds of those who contemplate it.

I submit that constitutional revision is not a burning issue in West Virginia or for that matter in any jurisdiction in America.

The reasons usually given for this—disinterest, conservatism, apathy, opposition of vested interests can go on ad infinitum.

Two former political science professors of mine—Ross and Davis state in "Issues of constitutional revision in West Virginia" that *the greatest obstacle to constitutional revision is public ignorance of the problems and issues involved*. From a practical political point of view I could not agree more. They also feel, and I agree, that only a concerted effort toward publicizing these problems and issues will overcome this general ignorance. In order to overcome this lack of knowledge a strategy must be developed to motivate the citizenry of the state to know the advantages of constitutional revision.

In the words of the present day college crowd, constitutional revision must become "meaningful and relevant."

* Former Special Counsel to Governor Hulett Smith; Counsel for Bureau for Government Research, W. Va. University; Member W. Va. Bar; A.B., 1961, J.D., 1963, W. Va. University.

The average voter has no peculiar or personal interest—as he sees it—to be served by constitutional revision. The average citizen probably is only remotely familiar with the constitution and the place which it holds in the law. His primary exposure to constitutional issues is essentially negative. That is—he hears that the constitution is interpreted to prevent some politician from exercising forbidden power. He does not see the constitution as an instrument defining powers and duties of government, but rather, a distant body of divinely inspired rules for the conduct of government, conceived of and executed by, our now distant ancestors to protect the public from rapacious rascals in public office who are determined to pervert the purposes of the commonwealth to their own personal ends.

Because the voter views the constitution as semi-sacred he is not apt to accept changes lightly. To present to the voter a hodgepodge of issues, without any strategy for education or enlightenment will only confuse him at best and threaten the basic foundations of government at worse. What the voter does not understand he may reject. The confused voter votes “no”. Thus, a campaign of education and enlightenment with affirmative psychology is imperative in any effort to gain acceptance of a proposed new constitution.

Political analysis and pollsters hold that there is roughly a 20 per cent “no” vote on any proposition that goes to the electorate. If we accept this we can see that it is essential to sell 70 per cent plus of the possible “yes” voters in order to gain the requisite 50 per cent plus one vote of the electorate in order to pass a proposed constitution.

In spite of the folklore to the contrary, history shows that West Virginians have not been adverse to accepting constitutional change. Since 1872 the voters of this state have voted upon 71 proposed amendments, ratifying 39 and rejecting 32 for an acceptance rate of 56 per cent. In such propositions as creation of a system of state roads, county unit school systems, tax limitation, road bonds, gubernatorial responsibility, to name a few, the voters have said “yes”.

In my view this was because the propositions were concrete and understandable. They were immediate, realistic issues. When, however, the ballot was crowded with a number of propositions, some meaningful, some meaningless and some politically motivated the

voter has tended to reject the package in toto. My research does not reveal that there was ever a co-ordinated, comprehensive educational program of the magnitude necessary to sell a package presentation.

Who is this mythical West Virginia voter to whom constitutional revision can be made revelant? For the most part he or she is a professional, in business, white collar or unionized labor and their families. He makes between \$7,000 and \$15,000 a year. He is relatively well-educated. He forms his opinions on public affairs from what he sees on television and to a lesser degree what he or his friends read in newspapers. He considers himself an independent voter whatever his party affiliation. He is not so concerned with bread and butter issues as he once was. He is hostile to tax burdens. He is interested in good schools for his children, better roads and highways, consumer protection, and pollution-free air and water. He is interested in keeping his taxes down, getting his kids to college, being safe from criminals, and relaxing and enjoying himself when he is not working. These qualities tend to blur "liberal" and "conservative" labels in favor of case by case judgment and solutions. Finally, most of these voters do not seem to care particularly which level of government acts—local, state or federal—as long as the schools are upgraded, crime controlled, traffic congestion relieved or whatever other problem is solved.

In short, he is interested in improving the quality of his life and the quality of life in the community in which he lives.

Almost two thirds of these people live in 16 counties of the state. It would seem then that in order to have major constitutional revision it is essential to identify an updated constitution as an important vehicle for improving the quality of life in West Virginia and to relate the detailed issues of reform to this general proposition.

How can this be done, you may ask? We must make constitutional reform a central political issue. This can be done through legislation providing for a constitutional convention. The three elections attendant to revising the constitution by the convention method—the election seeking the sense of the people, the election of delegates, and the ratification of the product of the convention—should be removed from the ordinary political processes. Perhaps this should be done in a non-election year. I do not intend to suggest that

constitutional revue is not a part of the political process. It is the heart and essence of the political process.

This approach would remove the convention from the viscissitudes of partisan politics and avoid involvement by entrenched political interests who are not geared up for action in off years. Non-partisan delegates would add a civic improvement flavor and avoid criticisms of a partisan nature when the revised document is presented to the people. In other words, it would not be an American independent, democratic or republican constitution. It would be a new constitution for all West Virginians.

Now, who will organize this effort? Who will co-ordinate the educational effort?

I propose a research education group which could be an enlargement of the function of the committee for constitutional revision which David Francis heads and with which I have worked. This committee has laid a good foundation for a committee for education on constitutional issues or ceci. Ceci would be a private, non-profit, tax exempt educational foundation with a professional staff which study into extensive detail the pros and cons of constiitutional revision in order to develop a program of action for encouraging positive citizen action on a constitutional convention. This research group could relate the needs for reform to the desires of the citizen for improving the quality of West Virginia government.

One of the products of this study group would be the preparation of a manual which would contain a detailed analysis of the relation of the constitution to the day-to-day activities of the citizen to his desire to improve his quality of life.

Let me take one issue and illustrate how I believe it would be possible to relate it to the citizen. At the present time the state government in West Virginia consists of more than one hundred agencies.

The model state constitution provides for twenty operating state departments. The public administration service of Chicago did a reorganization study of West Virginia state government in 1963 and 1964 and suggested a maximum of twenty-two operating departments for state government. Although I certainly do not want to oversimplify this issue, I am convinced that by bringing all of the functions of state government into 20 or 22 departments, significant reductions in administrative overhead could be realized.

This is an issue that relates directly to the interests of the taxpayer—freeing money spent on bureaucracy for the provision of goods and services in which he is interested. Now, this type of research which I am suggesting is expensive. A viable research organization of this type would cost at a minimum \$50,000 a year to maintain.

Ceci could well operate for two or more years before a convention might develop into reality. It would continue to exist through and after the convention in order to continue the basic research and education which I believe is essential to success.

After the convention a natural outgrowth of this committee would be a political-action committee. This committee would have to be divorced from ceci in order to preserve the tax-exempt status of the ceci.

The political-action committee would organize in the same manner that a political party gears up for a campaign.

The budget for such an effort should be about \$250,000. The total cost of research, education and political action should be about \$400,000 over a period of three years with the major expenditures of approximately \$350,000 coming in the last year when the radification election is held.

A moment ago I said that almost two thirds of these people live in 16 counties, about 80 per cent live in 26 counties. This leaves less than 400,000 people or under 20 per cent in the remaining 29 counties of the 55. These 29 counties contain the fewest of these voters who I have described above. These 29 counties are also the least exposed to television and daily newspapers which influence public opinion in the other 26.

Any effort to revise the constitution should of course involve the whole state but the concentration should be on these people in the 26 most populous counties.

In each county committees should be formed, such as the agricultural, business, civic, educational, fraternal, governmental, labor, media, political, religious, social leaders, as well as other identifiable leaders in the county to support constitutional revision. In each county a headquarters should be provided and staffed with volunteers who have been thoroughly briefed on the entire program and who has available a campaign "Bible" which would contain detailed

answers to all questions which might be raised by inquiring citizens.

In the 26 counties containing 80 per cent of the voters, saturation education should be pursued through newspapers, radio, television, billboards and direct mail.

In these counties efforts should be made to identify "yes" voters, to keep them informed on developments by newsletter and to encourage them to vote by telephone calls.

There are obviously a myriad of details which cannot be covered here but which should be co-ordinated by a professional staff who would be responsible for the efficient day-to-day operation of the entire enterprise.

If I may digress from the point of constitutional reform for just a moment—I would like to reflect upon the potential of West Virginia for just a moment within the context of the American community. We have a few less than two million people. This is approximately one per cent of the total population of this country. We are among the first twenty most industrialized states in the union. While our rate of growth is not as striking as that of Florida, California or Alaska, we can nevertheless look forward to progressive growth and a sound economy.

Although we have many problems, when considered in national perspective, West Virginia does not have some of the major problems which many states face. We do not have teeming masses of urban poor which present problems of almost insurmountable complexity. With our stable population and our sound economy we have an outstanding opportunity to develop a model state. Progress occurs all the time, but a responsive, modern, basic instrument of government in the form of a new constitution could be a giant step forward on the road to developing an outstanding modern state.

I hope that I have outlined here what I believe would be a practical working approach to approving a convention and ultimately a new constitution which would be the result of this convention.